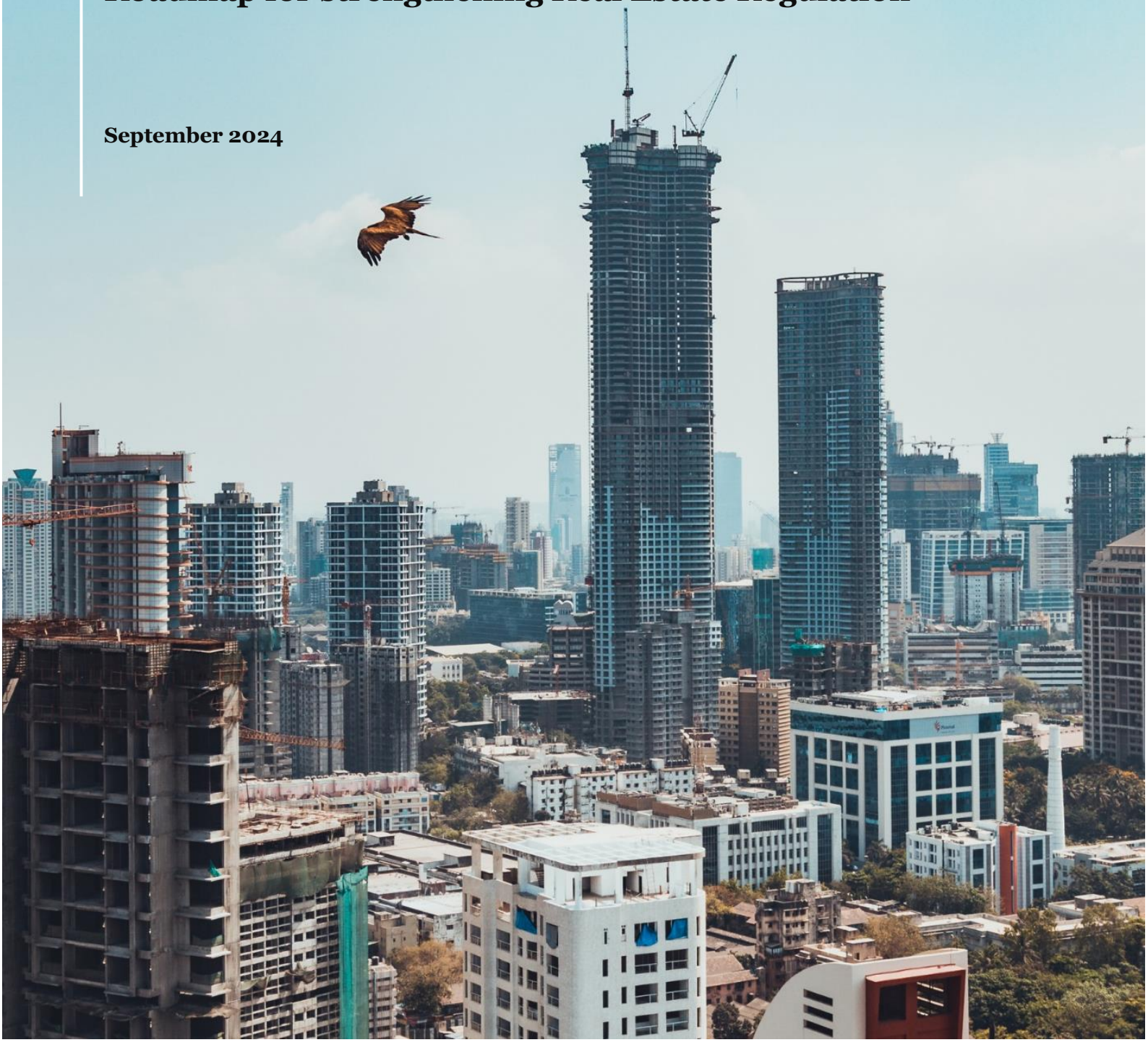


RERA 2.0: Unfolding the new era of Growth

Roadmap for strengthening Real Estate Regulation

September 2024



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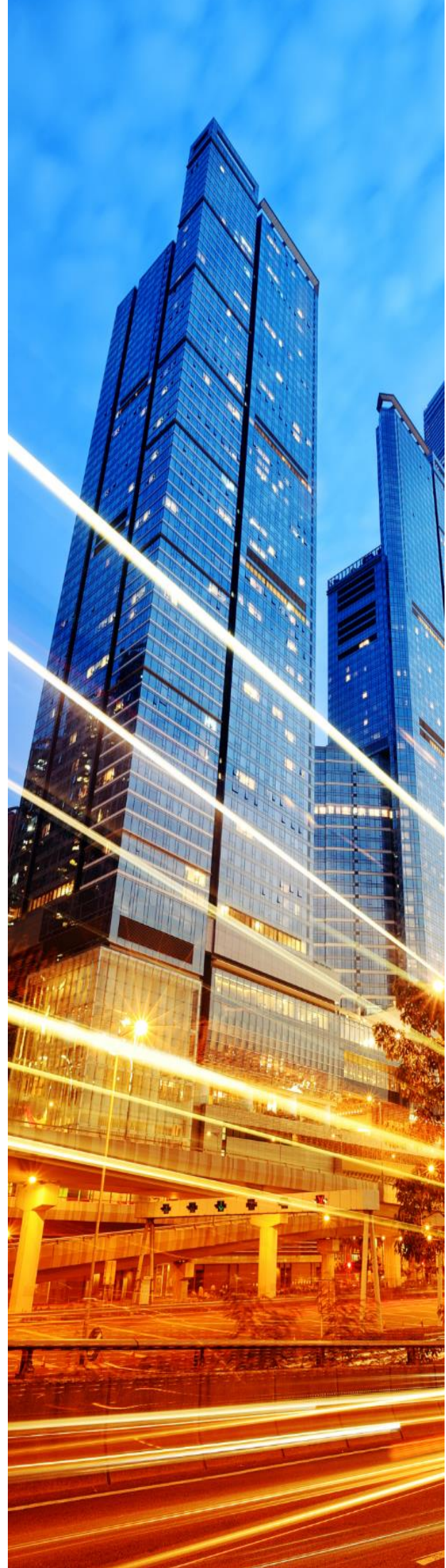
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Preface

Developers across the country, as key stakeholders in the Real Estate Sector, are actively contributing to the improvement of laws and regulations governing the industry. In this Thought Leadership, they have proposed measures to enhance the existing legal framework by promoting greater uniformity in the Real Estate (Regulation and Development) Act, 2016 (RERA Act) and associated rules, ensuring consistency in how Real Estate Sector is managed and regulated nationwide.

At the same time, emphasize is given on the need for flexibility to accommodate local requirements, recognizing that different regions have unique needs due to varying geographical, economic, and infrastructural conditions. To achieve this balance, the best practices from different states have been studied, allowing for the incorporation of effective, proven measures from across the country into local regulations. This collaborative approach seeks to foster the growth of the industry while ensuring a seamless experience for customers by creating a more efficient, streamlined, and adaptive regulatory environment that supports the widespread adoption of the RERA Act.



Mr Sushil Mohta, Member



Mr John Britto, Member



Mr Iftekar Inamdar, Member



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Boman Rustom Irani

President, CREDAI (National)

Over the past decade, India's real estate sector has undergone significant transformation, transitioning towards an era marked by professionalism, transparency, and robust foundations. Key policy interventions have played a crucial role in shaping the current landscape of the sector. Most notably, the implementation of the Real Estate (Regulation and Development) Act, 2016 (RERA) has catalysed a notable shift from an unorganized industry to a more structured framework, promoting transparency and accountability.

Since its implementation, RERA has been a transformative force, setting new standards for the regulation of real estate transactions and ensuring the interests of homebuyers are safeguarded. The Act mandates the registration of all real estate projects and agents, and it outlines clear responsibilities for promoters, agents, and buyers. It has established Real Estate Regulatory Authorities (RERAs) in various states, providing a robust framework for the regulation and promotion of the sector.

We are honoured to present this report, "RERA 2.0: Strengthening Real Estate Regulation," which captures the journey of RERA, provides a comprehensive overview of its implementation status across India, and outlines a roadmap for strengthening the Act to ensure its continued effectiveness. This report has been collaboratively developed by the Confederation of Real Estate Developers Associations of India (CREDAI) and Primus Partners. It offers an in-depth exploration of RERA's journey in India and its profound impact on the real estate sector, delving into recommendations for RERA 2.0 to further enhance growth and transparency within the sector.



Aarti Harbhajanka

Co-Founder & MD,
Primus Partners Pvt. Ltd

Real Estate sector plays a pivotal role in the economic development of the country. As the second largest employment generator, it attracts substantial foreign investments. However, prior to the introduction of the Real Estate (Regulation and Development) Act 2016 (RERA), the sector faced numerous challenges. It was largely unorganized, plagued by issues of accountability and transparency, and suffered from delays in the redressal of allottee complaints, leading to a general sense of distrust. Allottees often faced financial stress as they had to continue paying interest on housing loans even when projects were delayed.

The enactment of the RERA Act in 2016 has built in a significant transformation in the real estate sector, marking the onset of a new era characterized by increased transparency, citizen-centric governance, accountability, and financial discipline. RERA has significantly restored buyer and investor confidence in the Indian real estate market, with tangible results evident in recent years. In the fiscal year 2023, the value of home sales in India's residential property market reached an unprecedented high, recording a robust 48% year-on-year growth, with sales velocity increasing by 36% annually. The influx of foreign direct investment and private equity funds into India's real estate market, driven in part by RERA, underscores the sector's remarkable growth.

Despite its considerable achievements, RERA still requires adjustments to strike the optimal balance between regulation and development, thereby promoting sustainable and regulated growth in the real estate sector.



1. Executive Summary

Eight years ago, a landmark moment in India's real estate sector was marked by the enactment of the Real Estate (Regulation and Development) Act, 2016 (RERA). For the first time, a regulatory authority was established to oversee the real estate industry, bringing about a significant transformation in the sector. RERA has ushered in an era characterized by transparency, accountability, and customer-centricity, effectively leveling the playing field between promoters and allottees.

Since its inception, RERAs have registered over 1,30,186 projects, 88,461 agents, and disposed of 1,24,947 complaints. The Act has been implemented with full vigor across the country, with almost all states establishing their Regulatory Authorities, which have been doing tremendous work in this field.

RERA's implementation has led to several innovative practices that have been well-received by stakeholders, including conciliation mechanisms, QR codes for project verification, and training programs for agents. These initiatives have been pivotal in enhancing the sector's credibility and ensuring that consumer interests are safeguarded.

However, as with any evolving policy, there is a need to amend the Act to address the challenges faced by RERAs and remedy discrepancies within the current framework. Some of the amendments are proposed to ensure continued progress and effectiveness include allowing extensions for project completion beyond one year to accommodate unforeseen delays and complexities, providing clear guidelines on the defect liability period to protect allottees' interests effectively, remedying specific discrepancies in the Act to improve its implementation and enforcement and so on.

These amendments are crucial to overcoming the implementation challenges currently faced by RERA authorities and to continue fostering a robust real estate ecosystem that aligns with the needs and expectations of all stakeholders involved.

In conclusion, while RERA has laid a strong foundation for the real estate sector, these proposed amendments will further enhance its impact and ensure that it remains a dynamic and effective regulatory framework in the years to come.



2. Advent of RERA

2.1. Understanding RERA: Key Provisions

In India, a country with a population of around 1.4 billion, housing is a crucial element of the socio-economic fabric. Providing adequate housing is essential, not just as a basic human need, but also as a vital component in promoting economic stability and enhancing social well-being. Housing influences many aspects of life, including health, education, and employment, and acts as a foundation for community growth and societal advancement.

Following the agriculture sector, the real estate industry is the second-largest employment provider in India, employing over 13.24% of the country's workforce, making it a critical component of the national economy. The sector is intricately linked with more than 250 ancillary industries, underlining its extensive influence on the economic landscape.

The Indian residential market continues to be predominantly driven by end-users, with 64% of property seekers buying properties for self-use. This trend is expected to continue in 2024 as well because homeownership provides immense satisfaction and security, especially during uncertain times and exigencies.

77% Share of total household assets in India are held in real estate. Generally, a house is the primary and the most valuable asset owned

Importance of Real Estate Sector



GDP Contribution

Real estate & Construction sector contributed 8% to India's Gross Domestic Product (GDP) in 2022-23, making it a key to economic growth.



Labour Force

13.24% of Labour Force in India is deployed in Real Estate and Construction Sector, making it the second largest employer after agriculture.



Ancillary Industries

Real Estate sector is intricately linked with more than 250 ancillary industries, underlining its extensive influence on the economic landscape



Self-Use

Indian residential market continues to be predominantly driven by end-users, with 64% property seekers buying properties for self-use



Share of Household Assets

77% Share of total household assets in India held in real estate. Generally, a house is the primary and the most valuable asset owned by an individual.

by an individual. Consequently, it also generates significant liability on personal balance sheets.

In FY23, India's residential property market saw remarkable growth, with home sales hitting a record high of Rs. 3.47 lakh crore (US\$ 42 billion). This marks an impressive 48% increase compared to the previous year. The number of units sold also saw substantial growth, rising by 36% to a total of 379,095 units.

The Real Estate sector in India is witnessing robust growth, supported by the security provided by RERA regulations, leading to a surge in foreign investments into the country. In 2023, these foreign investments rebounded, increasing by 20% year-on-year to USD 3.6 billion. These funds were not limited to conventional sectors but also extended to alternative asset classes, enhancing the strong domestic growth across office, residential, and industrial segments. While the United States and Canada continue to be major sources of investment, key APAC countries such as Singapore, Hong Kong, South Korea, and Japan are increasingly focusing on India's expanding real estate market. In 2023, investments from the APAC region saw a remarkable 57% year-on-year increase, reaching USD 1.8 billion.

The Real estate sector in India is expected to reach US\$ 1 trillion in market size by 2030, up from US\$ 200 billion in 2021. Retail, hospitality, and commercial real estate are also growing significantly, providing the much-needed infrastructure for India's growing needs.

The Real Estate (Regulation and Development) Act, 2016 (RERA) was introduced to regulate the sector and provide a dedicated grievance redressal mechanism

The Government of India enacted Real Estate (Regulation and Development) Act, 2016 to usher in an era of greater transparency, efficiency, customer centricity and speedy dispute redressal in the real estate sector.

The key provisions of the Act, can be broadly Divided into four key categories:

Key Provisions of Real Estate (Regulation and Development) Act 2016



1. Institutional Framework

- I. State Real Estate Regulatory Authority: Each State / UT to establish Real Estate Regulatory Authority (RERA) for the regulation and promotion of the real estate industry. Effective regulation ensures an orderly and well-functioning sector, which is crucial for its growth.
- II. Mandatory Registration: Every Real Estate Project (where Land under development more than 500 Sqm / No. of units exceeds 8) should be registered with State RERAs before marketing, advertisement or sale.
- III. Building Plan Approvals: Building Plan Approvals (Commencement Certificate) to be in place before registration of any project
- IV. Agents Registration: Every Real Estate Agent Facilitating sales in RERA Registered Projects is to be registered with the respective RERA
- V. Complaint Redressal: Dedicated Dispute Resolution mechanism including Real Estate Regulatory Authority, Appellate Tribunal, Adjudicating Officers, etc.

2. Transparency and Accountability

- I. Information Symmetry: All Information including Approvals, Apartment Details (Carpet Area, Booked / Unsold etc.), Project Professionals, Project Progress etc. is online for public view
- II. Quarterly Progress Returns (QPR): QPR filed by promoters reporting the Physical and Financial Progress of the Project
- III. Defect liability period of five years for structural defects, defects in workmanship, quality or provision of services or other obligations
- IV. No Major Changes Without Consent: Consent of 2/3rd allottees for any addition or alteration
- V. No change in Ownership without Consent: Consent of 2/3 allottees for transferring majority rights to third party

3. Financial Discipline

- I. 70% of the amounts realized from the allottees shall be deposited in a separate account to cover the cost of construction and the land cost only

- II. Withdrawal from the account only with certification of Engineer, Architect and Chartered Accountant
- III. Max 10% of the booking amount can be taken before entering into a Sale Agreement.
- IV. Annual Audit of the Project Account
- V. Provision for RERA to freeze Project Bank Account upon non-compliance








4. Allottee Centricity

- I. Increased assertion on the timely completion of projects and delivery to the consumer. Failing which Interest Payments shall start
- II. Promoter to compensate buyer for any false or incorrect statement with a full refund
- III. Formation of Association of Allottees within the specified time or three months after the majority of units have been sold
- IV. Model Agreement of Sale provided to standardise important documents across projects
- V. Fast Track Dedicated Redressal Mechanism for Complaints under the Act

2.2. Implementation Statistics

The real estate sector has made great strides in implementing RERA since its enactment. The implementation of RERA has been welcomed by all stakeholders including Developers, Allottees, Agents, Financial Institutions etc.

RERA Implementation at a glance:

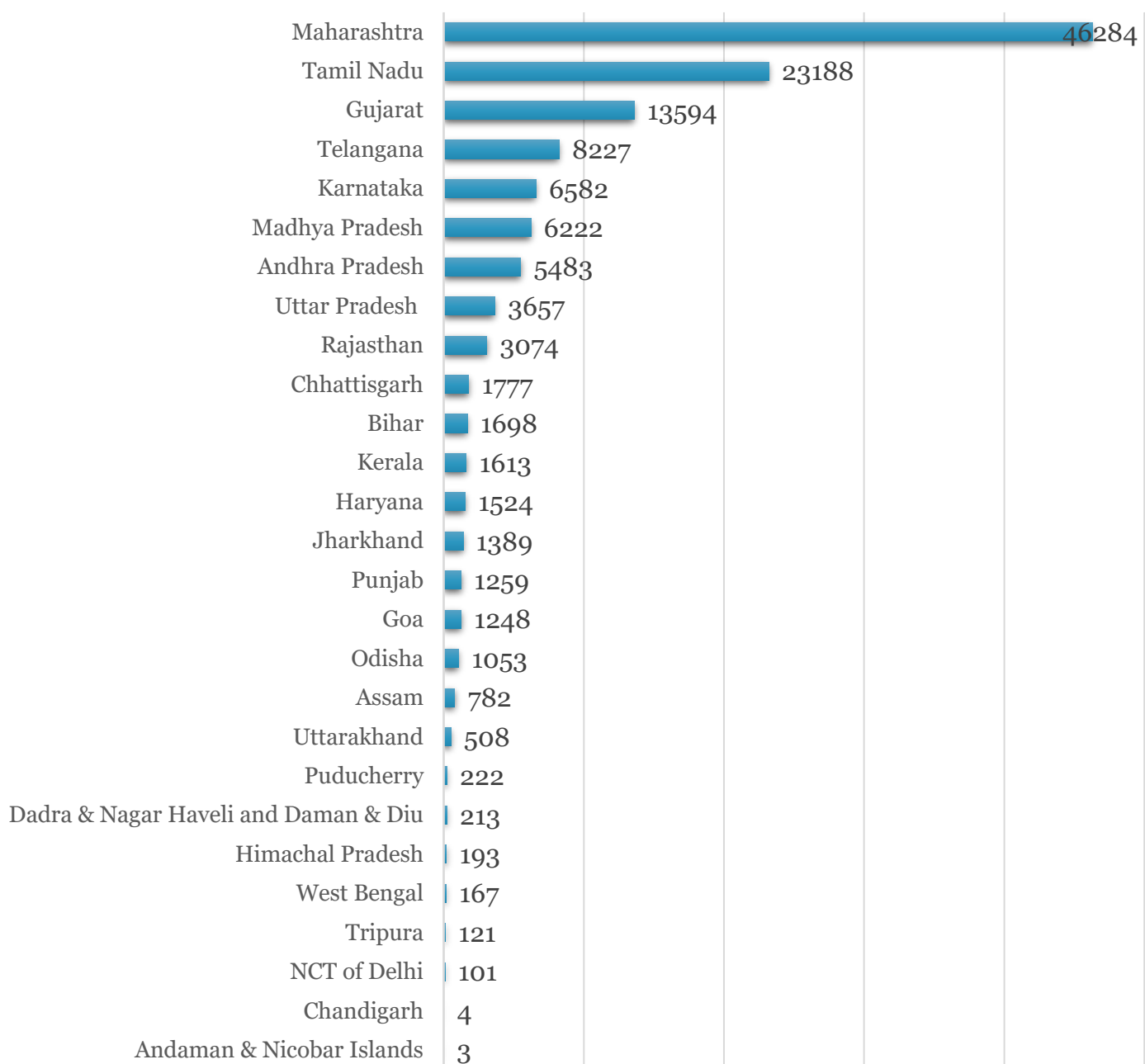
1	All States/UTs have notified rules under RERA (except Nagaland)	
2	32 States/UTs have set up Real Estate Regulatory Authority	
3	1,30,186 Real Estate Projects and 88,461 Real Estate Agents have registered under RERA across the Country.	
4	1,24,947 Complaints have been disposed-off by the Real Estate Regulatory Authorities across the Country	
5	28 States/UTs have set up Real Estate Appellate Tribunal	
6	Regulatory Authorities of 30 States/UTs have operationalized their websites under the provisions of RERA	
7	26 States/UTs have appointed Adjudicating Officer	

State-wise Implementation

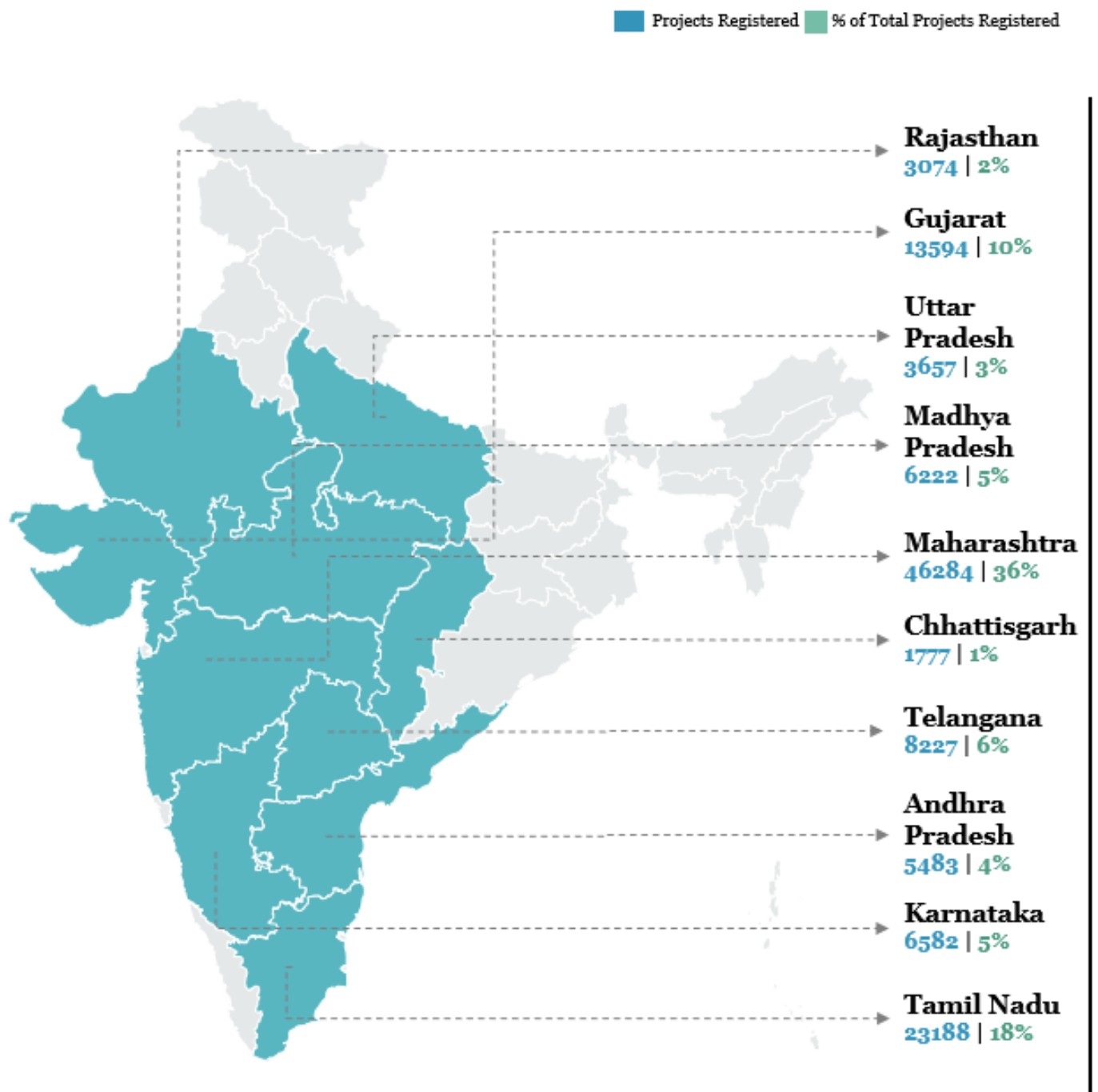
RERA has been notified in almost all States / UT and thirty-two states have set up State Real Estate Regulatory Authorities. In total, 1,30,186 projects have been registered across the country as on 1st July 2024. The State and UT level picture of RERA implementation is as follows:

Project Registration

State – wise Distribution of Registration of Projects as of 1st July 2024



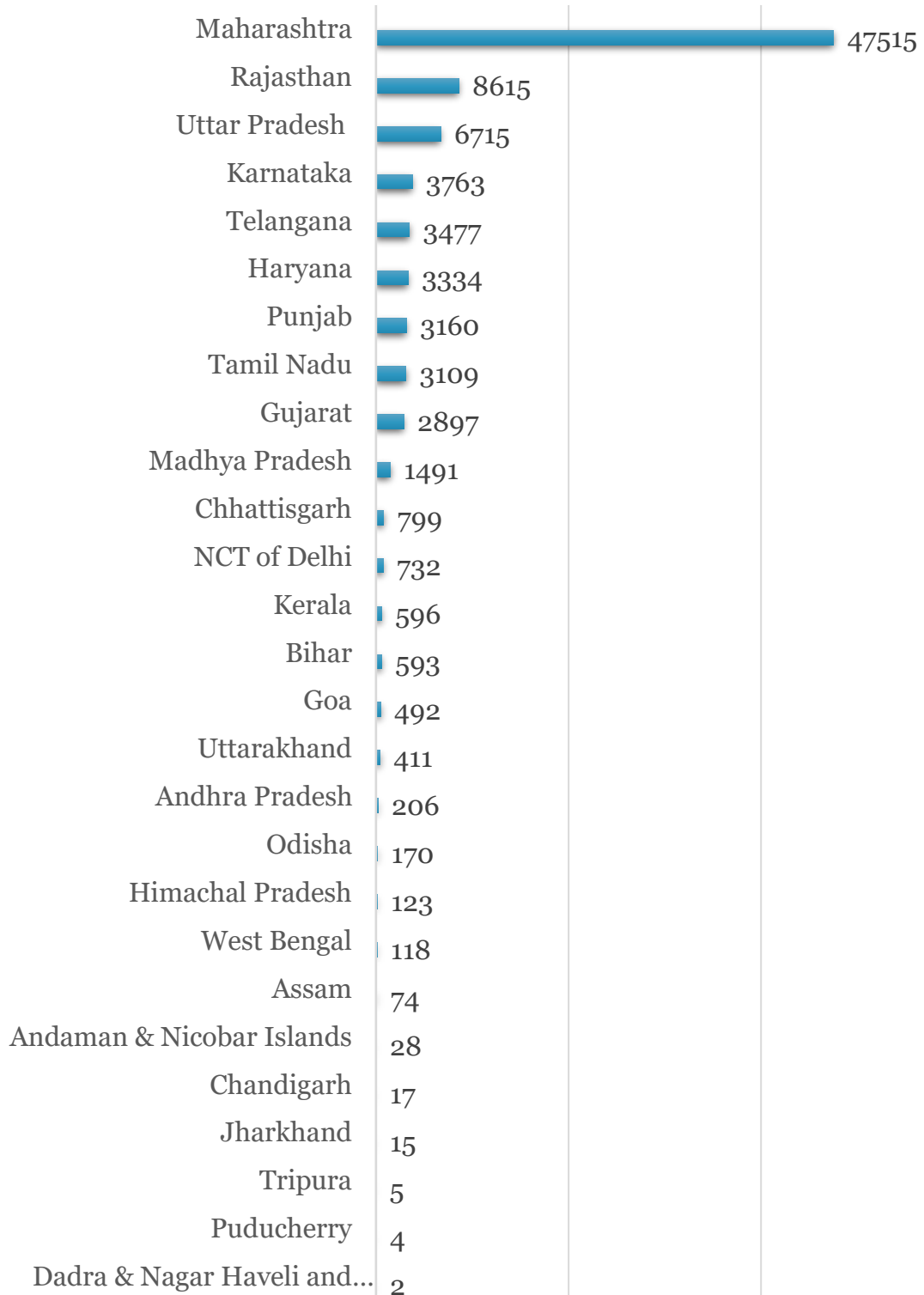
The top 10 states with respect to project registration contribute about 91% of the total projects registered in the country. The top ten states along with their percentage in total project registration are as follows:



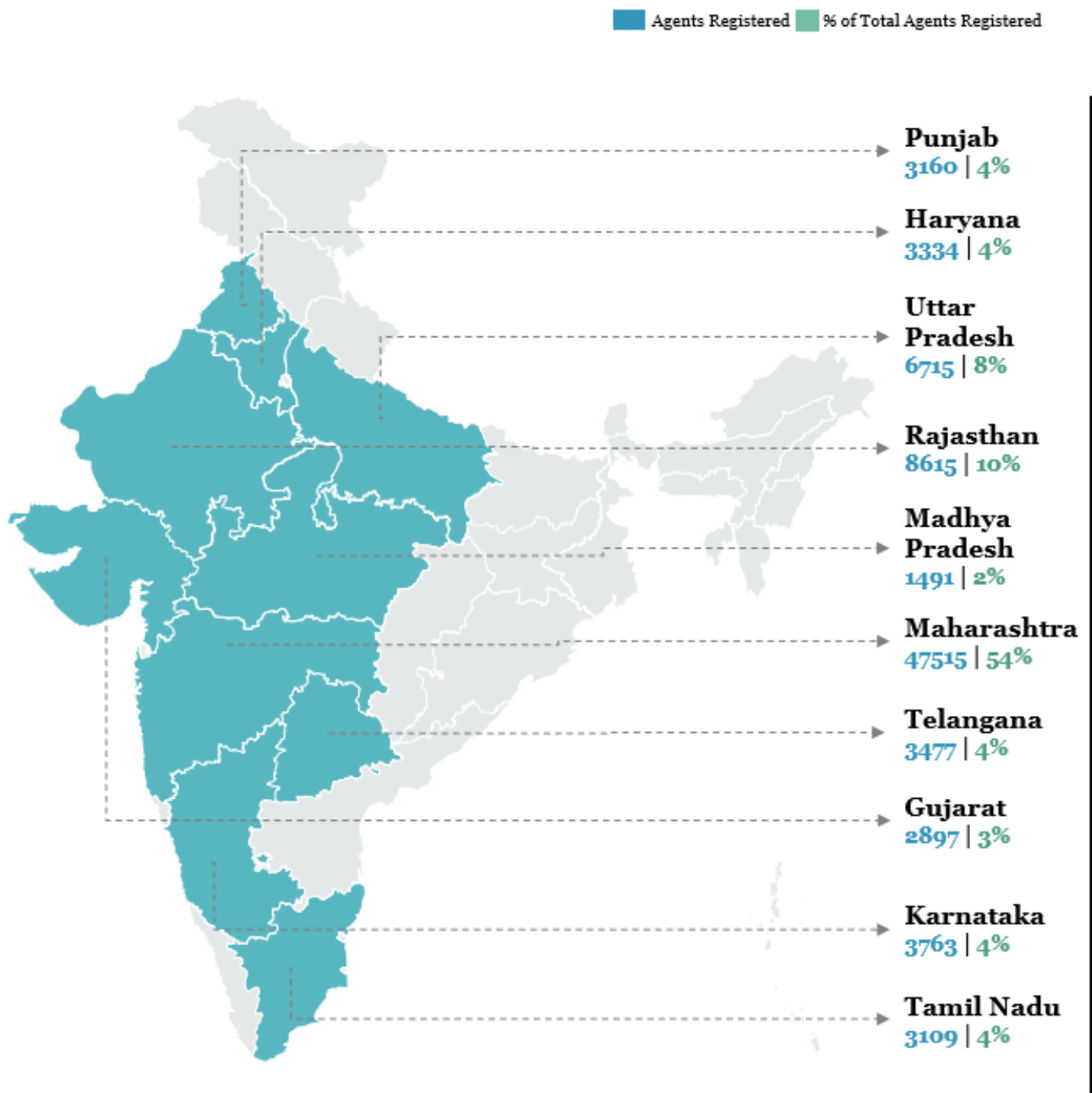
Agent Registration

88,461 Agents projects have been registered across the country as of 1st July 2024. The State and UT Level picture of Agent Registration is as follows:

State – wise Distribution of Registration of Agents as of 1st July 2024



The top 10 states with respect to Agent registration contribute about 95% of the total Agents registered in the country. The top ten states along with their percentage in total Agent registration are as follows:



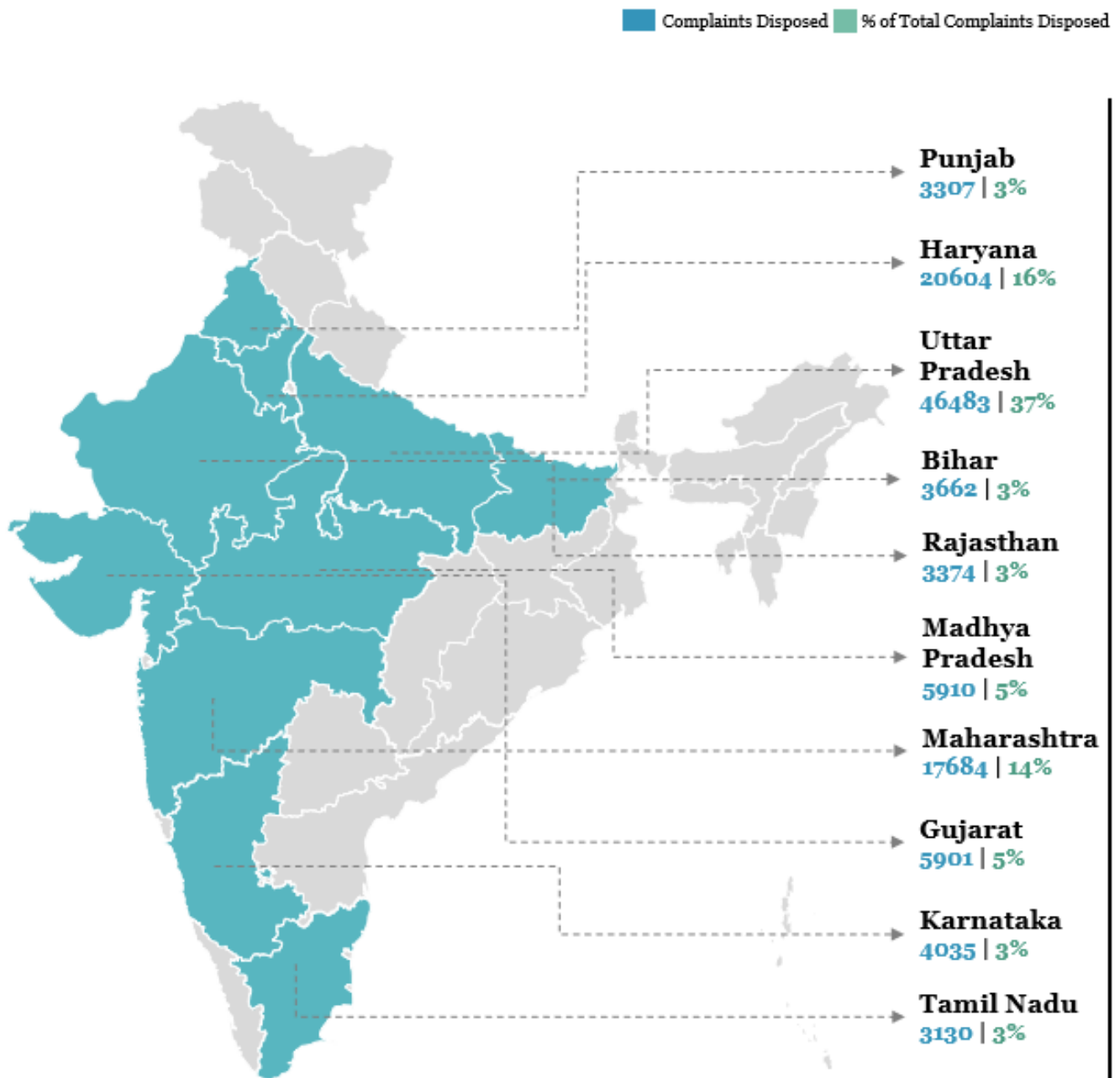
Complaints Management

In total, 1,24,947 complaints have been disposed across the country by all State Regulatory Authorities, as of 1st July 2024. The State and UT Level distribution of Complaints disposal is as follows:

State – wise Distribution of Disposal of Complaints by State Regulatory Authorities as of 1st July 2024



The top 10 states with respect to Complaints Disposal contribute to about 91% of the total Complaint Disposals in the country. The top ten states along with their percentage in total Complaint Disposals are as follows:





3. Learnings from State Good Practices

3.1. RERA Conciliation Forums

Implemented by following Real Estate Regulatory Authorities

Maharashtra, Uttar Pradesh, Gujarat, Haryana, Karnataka, Madhya Pradesh, Bihar

Name of the Good Practice

RERA Conciliation Forums

Description

The key Objective of Conciliation Forums is to facilitate an amicable resolution of disputes, thereby saving cost and time of litigation to parties and state.

Section 32(g) of the Act provides for facilitation of amicable conciliation of disputes between the promoters and the allottees through dispute settlement forums set up by the consumer or promoter associations.

Accordingly, several RERAs have established dispute resolution forums wherein neutral conciliators from promoters and consumer associations guide the parties towards an amicable settlement.

The adoption of conciliation forums across various states in India under RERA has proven to be an effective alternative to litigation, allowing disputes to be resolved amicably and efficiently. This approach benefits both homebuyers and developers by saving time, reducing costs, and fostering better relationships.

CREDAI (Confederation of Real Estate Developers' Associations of India) has been actively collaborating with RERAs across India to establish conciliation forums as a means to resolve disputes between homebuyers and developers. As part of this initiative, CREDAI members voluntarily participate as conciliators, bringing their expertise and industry knowledge to the process. This involvement not only aids in the swift resolution of conflicts but also significantly enhances trust between homebuyers and developers.

3.2. QR Code Implementation in RERA

Implemented by following Real Estate Regulatory Authorities	Maharashtra, Uttar Pradesh, Kerala, Karnataka
Good Practice	<p>QR Code providing details of Projects to Home-Buyers</p> <p>MahaRERA and UPRERA have introduced a unique QR code for every new project registered with it, as well as for every project with an active or valid registration. Homebuyers can scan this code to access all the project details from the RERA portal and verify the information provided by the promoter in advertisements.</p> <p>The Authority has mandated that promoters must include this project QR code in all communications with allottees, such as:</p> <ul style="list-style-type: none">- Booking Forms- Allotment Letters- Brochures- All promotional and marketing advertisements for the project- And more <p>The QR code provides access to comprehensive project details, including land documents, approved layouts and maps, project specifications and amenities, registration and completion dates, bank accounts, promoters, registered agents, quarterly progress reports, and Occupation/Completion Certificates.</p>
Description	



3.3. Circuit Courts

Name of Real Estate Regulatory Authority	Madhya Pradesh Real Estate Regulatory Authority (MPRERA)
Good Practice	Circuit Courts
Year of Implementation	2019
Description	<p>Madhya Pradesh Real Estate Regulatory Authority, with its headquarters at Bhopal, has established an innovative practice known as circuit courts to enhance the efficiency and accessibility of its judicial system.</p> <p>In this model, the authorities regularly travel to key cities: Indore, where they visit twice a month, and Jabalpur and Gwalior, where they go once a month each. This approach allows the authorities to hear cases related to projects based out of these cities directly in the respective locations, thus making the judicial process more convenient for litigants who would otherwise need to travel to Bhopal.</p> <p>The circuit courts not only streamline the disposal of legal matters by bringing the judicial process closer to the people but also foster better communication between the authorities and the local real estate stakeholders. By holding sessions in different cities, the authorities can engage directly with the local real estate developers, investors, and other stakeholders, gaining a deeper understanding of the unique challenges and concerns specific to each city. This regular interaction helps in tailoring regulatory and developmental policies more effectively to suit the local contexts, thereby promoting a more responsive and dynamic governance structure within the real estate sector of Madhya Pradesh.</p>




3.4. Visual Progress & Real Estate Inventory of Projects

<p>Implemented by following Real Estate Regulatory Authorities</p>	<p>Tamil Nadu, Gujarat, Karnataka, Andhra Pradesh, Kerala</p>
<p>Good Practice</p>	<p>Visual Progress & Real-Time Tracking of Inventory</p>
<p>Description</p>	<p>Several RERA Websites provide a very detailed view of the project to citizens.</p> <p>Along with various details of projects like Project Approvals, Brochure, Commence Certificate, Amenities, Financial Statements, Legal Title Deeds etc., it also provides details like</p> <ul style="list-style-type: none"> - Photographs on Progress of Project - Real Time Inventory of Projects for Citizens and so on

Snapshot of Gujarat RERA Web portal

Unit Photos

View All



Unit Wise Booking Status

A-101	A-102	A-103	A-104	A-105	A-106	A-107	A-108	A-109	A-110	A-111	A-112	A-113	A-114	A-115	A-116	A-117	A-118	A-119	A-120	A-121	A-122	A-123	A-124
A-125	A-126	A-127	A-128	A-129	A-130	A-131	A-132	A-133	A-134	A-135	A-136	A-137	A-138	A-139	A-140	A-141	A-142	A-143	A-144	A-145	A-146	A-147	A-148
A-149	A-150	A-151	A-152	A-153	A-154	A-155	A-156	A-157	A-158	A-159	A-160	A-161	A-162	A-163	A-164	A-165	A-166	A-167	A-168	A-169	A-170	A-171	A-172
A-173	A-174	A-175	A-176	A-177	A-178	A-179	A-180	A-181	A-182	A-183	A-184	A-185	A-186	A-187	A-188	A-189	A-190	A-191	A-192	A-193	A-194	A-195	A-196
										A-197	A-198												

3.5. Real Estate Agent Training and Certification

**Implemented
by following
Real Estate
Regulatory
Authorities**

Maharashtra, Uttar Pradesh

Good Practice

Real Estate Agent Training and Certification

Description

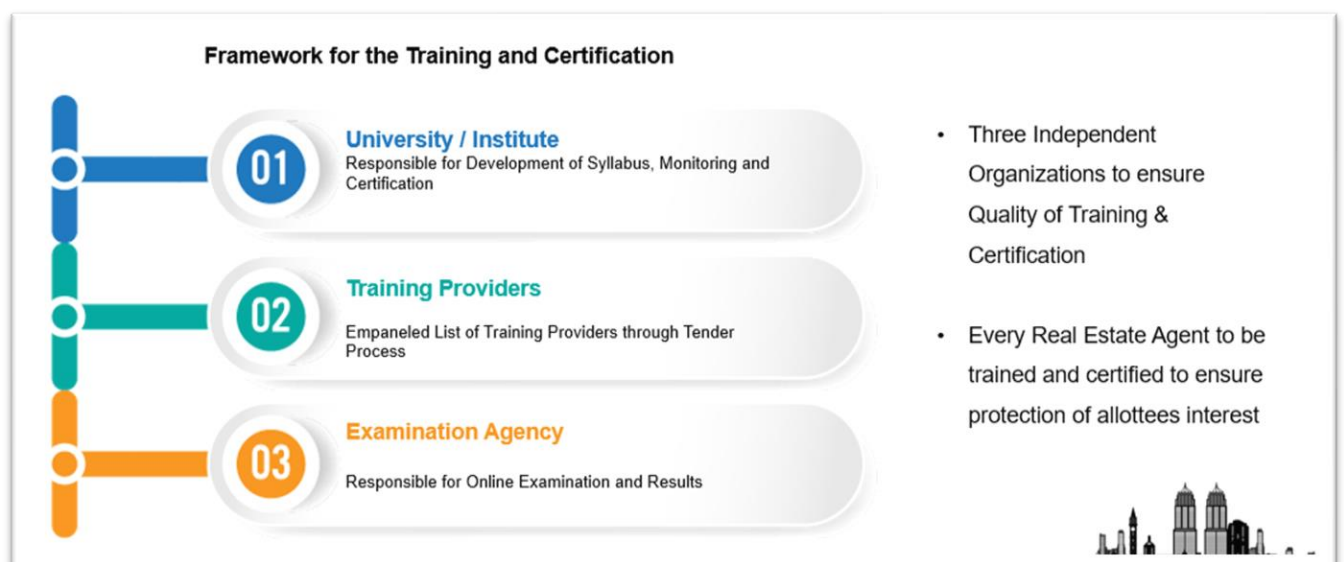
Real estate agents are essential elements of the real estate sector, who connect allottees and promoters and facilitate most of the real estate transactions. The Real Estate (Regulation and Development) Act, 2016 recognizes real estate agents as one of the key stakeholders along with allottees and promoters. Accordingly, every real estate agent is required to be registered with RERA before facilitating the sale or purchase of or act on behalf of any person to facilitate the sale or purchase of any plot, apartment unit or building as the case may be in a real estate project or part of it being sold by a promoter.

Real estate agents being the public face and an intermediary between home buyers/allottees and promoters it is essential that real estate agents have a comprehensive understanding of the real estate transaction in order to guide the home buyers/allottees through each stage of purchase of any plot, apartment unit or building so as to avoid any misunderstanding and disputes.

Therefore, RERAs have introduced real estate agent training and certification program.

In many countries, including the USA, Singapore, Australia, Dubai etc, Real Estate Agents need to undergo professional training and certification before practicing their profession. (Just Like any other profession like CA, Lawyer, CS etc.)

MahaRERA Framework for Real Estate Agent Training and Certification



3.6. Defect Liability for MEP

Implemented by following Real Estate Regulatory Authorities	Telangana Real Estate Regulatory Authority
Good Practice	Telangana RERA has clearly defined the terms of Defect Liability excluding consumer durables, electrical, plumbing etc.
Description	<p>In Telangana State Real Estate (Regulation and Development) Rules, 2017, under Model Agreement, Telangana RERA has prescribed the following details for Defect Liability:</p> <p>“DEFECT LIABILITY:</p> <ol style="list-style-type: none"> 1. It is agreed that in case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the Promoter as per the agreement for sale relating to such development is brought to the notice of the Promoter within a period of 5 (five) years by the Allottee from the date of handing over possession, it shall be the duty of the Promoter to rectify such defects without further charge, within 30 (thirty) days, and in the event of Promoter’s failure to rectify such defects within such time, the aggrieved Allottees shall be entitled to receive appropriate compensation in the manner as provided under the Act. 2. Notwithstanding anything contained in the above clause the following exclusions are made <ol style="list-style-type: none"> a. Equipment (lifts, generator, motors, STP, transformers, gym equipment etc) which carry manufacturer’s guarantees for a limited period. Thereafter the welfare association /society shall take an annual maintenance contract with the suppliers. The Promoter shall transfer manufacturer guarantees/warrantees to the allottee or association of allottees as the case may be. b. Fittings related to plumbing, sanitary, electrical, hardware, etc. having natural wear and tear. c. Allowable structural and other deformations including expansion quotient. d. The terms of work like painting etc. which are subject to wear and tear. 3. The allottees shall maintain the apartments in good tenantable conditions and carry out the internal repairs for the upkeep of the apartments. The association of the allottees or its assigns shall maintain

the services and amenities in good condition and covered with proper AMC and insurance. The obligation of the developers shall be subject to proper maintenance and upkeep of the apartments/services and amenities by the allottee or the association of the allottees as the case may be.”

3.7. Allottee Grievance Office

Name of Real Estate Regulatory Authority	Maharashtra Real Estate Regulatory Authority (MahaRERA)
Good Practice	Allottee Grievance Redressal Officer
Year of Implementation	2023
Description	<p>MahaRERA implemented this initiative to improve customer centricity and resolve allottees' concerns more efficiently, leading to greater satisfaction among homebuyers.</p> <p>In many instances, allottees encounter difficulties in determining the right channel for addressing their complaints within a real estate project, as the sales staff, who were their primary point of contact during the pre-sales phase, may not be equipped to handle post-sales issues effectively.</p> <p>It is essential to address and resolve grievances at the earliest possible stage to prevent them from escalating into more significant disputes.</p> <p>Therefore, MahaRERA introduced the Allottee Grievance Redressal Officer as follows:</p> <ul style="list-style-type: none"> • Allottee Grievance Redressal Officer: Real estate promoters should appoint a designated Allottee Grievance Redressal Officer responsible for receiving and promptly addressing complaints/ grievances of the allottees with specific emphasis on resolving such complaints fairly and expeditiously. • Each real estate project should have at least one Allottee Grievance Redressal Officer, and their contact details should be made easily accessible to allottees. MahaRERA suggests uploading this information on their website for convenient access by the allottees.



4. Recommendations and Call for Action

4.1. Need for Amendments in the Act

Real Estate (Regulation and Development) Act, enacted in 2016 was a landmark reform that fundamentally transformed the Indian real estate sector. The introduction of RERA brought about a paradigm shift by establishing a robust regulatory framework designed to promote transparency, accountability, and efficiency.

However, despite its significant impact, the Act has not seen any amendments in the eight years since its implementation. This is an anomaly in the legislative landscape of India, where most major laws undergo periodic revisions to address new challenges and incorporate feedback from stakeholders.

One of the primary reasons for the need to amend RERA is to address the ambiguities and gaps that have emerged during its implementation. While the Act has provided a robust framework for regulating the real estate sector, practical challenges and unforeseen issues have surfaced over the years. These include complexities related to project registration, financial transparency, and the timely completion of projects. Amendments are essential to clarify these ambiguities and strengthen the regulatory mechanisms, ensuring that the Act remains effective in achieving its objectives.

Furthermore, the real estate sector has witnessed significant changes over the past eight years, including the adoption of new technologies. The Act needs to be updated to reflect these changes and to promote innovation and sustainability in real estate development. By amending RERA, the government can ensure that it continues to foster a transparent, accountable, and consumer-friendly real estate environment in India.

In the following sections, various recommendations for amendments have been suggested including:

- Ensuring all stakeholders in Real Estate Projects but not limited to Promoters, Allottees, Real Estate Agents, Association of Allottees, Financial Institutions, Investors, Landowners, and competent authorities including its concerned officials; are answerable to the Authority for completion of the project
- Focus on the resolution of stressed assets with a clear roadmap for completion of stressed real estate projects
- Defining Key Roles and Responsibilities of the Association of Allottees
- Plugging various ambiguities in Act including
 - Allowing Cancellation of Registered Agreements through Order of Authority in cases where allottees are not making their payments to promoters
 - Reducing Defect Liability period for white goods
 - Allowing the extension of projects by more than a year at the discretion of authority and so on.

4.2. Key Recommendations

4.2.1. Extension of Registration Beyond One Year (Section 6)

Section 6 of the Real Estate (Regulation and Development) Act, 2016 deals with the extension of the registration granted to real estate projects. According to this section, the Regulatory Authority can extend the registration for a maximum period of one year in cases of force majeure, which includes unforeseen circumstances such as natural disasters that prevent the fulfillment of contractual obligations.

Existing Section:

“Extension of Registration 6. *The registration granted under section 5 may be extended by the Authority on an application made by the promoter due to force majeure, in such form and on payment of such fee as may be specified by regulations made by the Authority:*

Provided that the Authority may in reasonable circumstances, without default on the part of the promoter, based on the facts of each case, and for reasons to be recorded in writing, extend the registration granted to a project for such time as it considers necessary, which shall, in aggregate, not exceed a period of one year:

Provided further that no application for extension of registration shall be rejected unless the applicant has been given an opportunity of being heard in the matter.

Explanation — For the purpose of this section, the expression "force majeure" shall mean a case of war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project.”

Need for Amendment

The Act provides for a maximum one-year extension of registration of the project. There is no provision for extending a project registration for more than a year. In several cases due to unforeseen circumstances like stop work by the Government, Change in Regulation, stress in the projects etc, more time period is required to complete the project.

In such cases, as long as the majority of the allottees are in consent, the authority may provide an extension beyond one year on a case-to-case basis as it thinks proper.

Proposed Section

(6) The registration granted under section 5 may be extended by the Authority on an application made by the promoter due to force majeure **or otherwise**, in such form and on payment of such fee as may be specified by regulations made by the Authority:

Provided that the Authority may in reasonable circumstances, without default on the part of the promoter, based on the facts of each case, and for reasons to be recorded in writing, extend the registration granted to a project for such time as it considers necessary. ~~which shall, in aggregate, not exceed a period of one year:~~

Provided further that no application for extension of registration shall be rejected unless the applicant has been given an opportunity of being heard in the matter.

Explanation — For the purpose of this section, the expression "force majeure" shall mean a case of war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project."

4.2.2. All Stakeholders to be accountable (Section 37)

The Act primarily identifies three key proponents of Real Estate Projects i.e Promoter, Allottee and Real Estate Agent.

However, for the completion of real estate projects, there are many stakeholders involved whose support is required for dispute resolution from time to time including Financial Institutions, Investors, Landowners, competent authority etc. There is a need to strengthen Regulatory Authority to provide directions to all stakeholders for project completion.

Existing Section:

"Powers of Authority to issue directions 37. *The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.*

Need for Amendment

The State Real Estate Regulatory Authorities should be empowered to give directions to all stakeholders involved in real estate projects for discharging its functions under the provisions of this Act including Promoters, Allottees, Real Estate Agents, Association of Allottees, Financial Institutions, Investors, Landowners, competent authority and so on.

Proposed Section

Addition of Definition:

(zq1) "Stakeholder" means any person having an interest in real estate project, including but not limited to Promoters, Allottees, Real Estate Agents, Association of Allottees, Financial Institutions, Investors, Landowners, competent authority including its concerned officials, Architect, Chartered Accountant, Consultants.

Amendment in existing Section.

37. The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the stakeholders, as it may consider necessary and such directions shall be binding on all concerned.

4.2.3. Defect Liability Section to be clarified (Section 14(3))

There are several ambiguities in the Structural Defect Liability Section which need to be clarified including

- Structural Defect Liability period should start from the date of the Occupation Certificate.
- With respect to Consumer durables, Electrical goods and services, the defect liability should be reduced to one year, in keeping with the guarantee period the manufacturers usually provide.

Telangana RERA has introduced clarification to this regard in their rules and the same needs to be incorporated in the Act.

Existing Section:

“14 (3). In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act.

Need for Amendment

As is Industry Practice, Structural Defect Liability period should commence from Occupation Certificate.

Further, there needs to be a distinction between structural defect liability and defects in consumer durables, electrical goods and services. In the case of white goods or other services, the defect liability should be reduced to one year, in keeping with the guarantee period the manufacturers usually provide.

Proposed Section

14 (3). (i) In case any structural defect is brought to the notice of the promoter within a period of five years by the allottee from the date of the Occupancy Certificate.

In case of any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of one year by the allottee from the date of Occupancy Certificate.

It shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of the promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act

(ii) Notwithstanding anything contained in the above clause the following exclusions are made

a. Equipment (lifts, generator, motors, STP, transformers, gym equipment etc) which carry manufacturer's guarantees for a limited period. Thereafter the welfare association /society shall take an annual maintenance contract with the suppliers. The Promoter shall transfer manufacturer guarantees/warranties to the allottee or association of allottees as the case may be.

b. Fittings related to plumbing, sanitary, electrical, hardware, etc. having natural wear and tear.

c. Allowable structural and other deformations including expansion quotient.

d. The terms of work like painting etc. which are subject to wear and tear

4.2.4. Minor Changes in Promoter Entity to not warrant two third consent (Section 15(1))

As per Section 15 of the Act, the promoter shall not transfer or assign his majority rights to a third party without the consent of two-thirds of the allottees. However, it should be clarified that changes in internal shareholding or constituents due to reasons such as succession, etc., do not require such consent as long as these changes do not affect the obligations and liabilities with respect to the allottees.

Furthermore, changes in the promoter entity's structure, such as transitioning from unlisted to listed, or from LLP to Private Limited, should not require the consent of two-thirds of the allottees.

Existing Section:

“Obligations of promoter in case of transfer of a real estate project to a third party. 15(1) The promoter shall not transfer or assign his majority rights and liabilities in respect of a real estate project to a third party without obtaining prior written consent from two-third allottees, except the promoter, and without the prior written approval of the Authority:

Provided that such transfer or assignment shall not affect the allotment or sale of the apartments, plots or buildings as the case may be, in the real estate project made by the erstwhile promoter.

Explanation.—For the purpose of this sub-section, the allottee, irrespective of the number of apartments or plots, as the case may be, booked by him or booked in the name of his family, or in the case of other persons such as companies or firms or any association of individuals, by whatever name called, booked in its name or booked in the name of its associated entities or related enterprises, shall be considered as one allottee only.”

Proposed Section

15. (1) The promoter shall not transfer or assign his majority rights and liabilities in respect of a real estate project to a third party without obtaining prior written consent from two-third allottees, except the promoter, and without the prior written approval of the Authority:

Provided that such transfer or assignment shall not affect the allotment or sale of the apartments, plots or buildings as the case may be, in the real estate project made by the erstwhile promoter.

Provided that changes in (internal) shareholding or constituents of promoter's organization, that doesn't affect obligations and liabilities with respect to the Allottee(s) and the rights and liabilities of the promoter's organization, shall not require the aforementioned approvals.

Provided further that any conversion of the promoter entity under any statute, of

- (i) Partnership Firm into LLP / Private Limited Company or
- (ii) Conversion of Private Limited Company or unlisted company to listed company or LLP or otherwise
- (iii) Proprietorship change by succession to legal heirs / Addition of Partners from Family in Partnership concern

shall not require the aforementioned approvals

Explanation.—For the purpose of this sub-section, the allottee, irrespective of the number of apartments or plots, as the case may be, booked by him or booked in the name of his family, or in the case of other persons such as companies or firms or any association of individuals, by whatever name called, booked in its name or booked in the name of its associated entities or related enterprises, shall be considered as one allottee only

4.2.5. Clarification regarding minor changes like car parking lot (Section 14(2))

As per Section 14(2) of the Act, the promoter may make such minor additions or alterations as may be required by the allottee or such minor changes or alterations as may be necessary due to architectural and structural reasons duly recommended and verified by an authorised Architect or Engineer after proper declaration and intimation to the allottee. Such minor changes do not require previous consent from the allottee.

However, in cases like minor changes to car parking, in the following circumstances like:

- The promotor has provided additional feasible car parking over and above the minimum obligations as per sanction requirements of the competent authority without compromising the development regulations.
- The promotor relocates/shifts some of the parking in view of site conditions/fouling along shafts etc.
- The promotor realigns some of the 2-wheeler parking to car parking without impacting the norms.

The promoter should be allowed to make necessary changes and with the verification of the Authorised Architect / Engineer and after proper declaration and intimation to the allottee.

While the act allows for such minor changes, there is a need for clarifying the same..

Existing Section:

“14(2) Notwithstanding anything contained in any law, contract or agreement, after the sanctioned plans, layout plans and specifications and the nature of the fixtures, fittings, amenities and common areas, of the apartment, plot or building, as the case may be, as approved by the competent authority, are disclosed or furnished to the person who agree to take one or more of the said apartment, plot or building, as the case may be, the promoter shall not make—

(i) any additions and alterations in the sanctioned plans, layout plans and specifications and the nature of fixtures, fittings and amenities described therein in respect of the apartment, plot or building, as the case may be, which are agreed to be taken, without the previous consent of that person:

Provided that the promoter may make such minor additions or alterations as may be required by the allottee, or such minor changes or alterations as may be necessary due to architectural and structural reasons duly recommended and verified by an authorised Architect or Engineer after proper declaration and intimation to the allottee.

Explanation.—For the purpose of this clause, "minor additions or alterations" excludes structural change including an addition to the area or change in height, or the removal of part of a building, or any change to the structure, such as the construction or removal or cutting into of any wall or a part of a wall, partition, column, beam, joist, floor including a mezzanine floor or other support, or a change to or closing of any required means of access ingress or egress or a change to the fixtures or equipment, etc.”

Proposed Section

14(2) Notwithstanding anything contained in any law, contract or agreement, after the sanctioned plans, layout plans and specifications and the nature of the fixtures, fittings, amenities and common areas, of the apartment, plot or building, as the case may be, as approved by the competent authority, are disclosed or furnished to the person who agree to take one or more of the said apartment, plot or building, as the case may be, the promoter shall not make—

(i) any additions and alterations in the sanctioned plans, layout plans and specifications and the nature of fixtures, fittings and amenities described therein in respect of the apartment, plot or building, as the case may be, which are agreed to be taken, without the previous consent of that person:

Provided that the promoter may make such minor additions or alterations as may be required by the allottee, or such minor changes or alterations as may be necessary due to architectural and structural reasons duly recommended and verified by an authorised Architect or Engineer after proper declaration and intimation to the allottee.

Explanation.—For the purpose of this clause, "minor additions or alterations" excludes structural change including an addition to the area or change in height, or the removal of part of a building, or any change to the structure, such as the construction or removal or cutting into of any wall or a part of a wall, partition, column, beam, joist, floor including a mezzanine floor or other support, or a change to or closing of any required means of access ingress or egress or a change to the fixtures or equipment, etc.

Explanation.- For the purposes of this clause, "minor additions or alternation" shall include relocation of car parking with verification of authorised Architect or Engineer after proper declaration and intimation to the allottee.

4.2.6. Enforcement of Orders regarding signing / cancelling agreements (Section 40)

One of the key challenges faced by state real estate regulatory authorities is enforcement of their orders regarding cancellation of agreements of sale.

At times, Allottees are in non-compliance to Agreement of sale, don't pay the requisite payments and refuse to cooperate for cancellation of Agreement. As per Section 11(5) of the Act, the promoter can cancel the allotment as per terms of the agreement for sale. However, Many a times, the allottees do not cooperate and come forward for cancellation of the agreement of sale. In such cases, the Authority needs to have the power to record the cancellation of agreement of sale.

Proposed Section

Addition of a new section

40(3) Enforcement of Order regarding cancellation of registered agreement:

If the instrument has been registered under the Indian Registration Act, 1908 (16 of 1908), the Authority shall send a copy of its order to the officer in whose office the instrument has been so registered and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.

4.2.7. Deregistration of Projects

There are instances where Promoters who have registered their real estate projects are unable to commence and complete the construction of the same or having commenced the construction are not in a position to complete the construction of the real estate project due to various reasons (illustrations not exhaustive) such as lack of funds, projects economically not viable litigations filed, inter se disputes/family disputes, change in planning Government / Planning Authority Notifications and accordingly are desirous of discontinuing the said real estate project. In such cases, keeping these real estate projects as a project registered with RERA will serve no fruitful purpose, nor would the same be beneficial to any stakeholders.

In such cases, de-registration of such real estate projects shall be allowed. While deregistration, the RERAs should ensure that there are no allottees present in the project and in case there have been allottees, the rights of such allottees need to be settled.

Proposed Section

Addition of new Section

6A. Deregistration of Project: The registration granted under section 5 may be deregistered by the Authority on an application made by the promoter, in such form and on payment of such fee as may be specified by the Authority:

Provided that there is no sale or booking effected by the promoter and no third-party allottee rights have been created. Further, in case of a project where third-party rights have been created, the Authority can de-register a project with the consent of a minimum of two-thirds of the allottees, after issuance of a public notice giving proper opportunity of hearing to the affected parties.

4.2.8. Deletion of clause of Title Insurance (Section 16)

Under Section 16 of the act, the Promoter is required to obtain Insurance in respect of the title of the land and building and construction. For the past seven years, this section has not been implemented and rightly so, because of the following reasons:

- Title insurers in India face a greater risk since the land records in Indian government repositories are suboptimal. Even after undertaking a careful title search of the property, the chances that its title may be found defective ex-post, are higher in the Indian context.
- There is limited standardization of the ‘underwriting procedures’ to be used by title insurers. There are no guidelines which specify what the insurers must cover as part of the due diligence process.
- Title insurance is an expensive product and is 1-3% of real estate project cost and the premium is to be paid for a period of 7-12 years.
- There are many exclusions in the title insurance policies like claims arising due to missing government records, claims due to tribal rights over agricultural lands, actions of government and so on.

Existing Section

Obligations of promoter regarding insurance of real estate project: 16. (1) The promoter shall obtain all such insurances as may be notified by the appropriate Government, including but not limited to insurance in respect of —

- (i) title of the land and building as a part of the real estate project; and
- (ii) construction of the real estate project.

(2) The promoter shall be liable to pay the premium and charges in respect of the insurance specified in sub-section (1) and shall pay the same before transferring the insurance to the association of the allottees.

(3) The insurance as specified under sub-section (1) shall stand transferred to the benefit of the allottee or the association of allottees, as the case may be, at the time of the promoter entering into an agreement for sale with the allottee.

(4) On formation of the association of the allottees, all documents relating to the insurance specified under sub-section (1) shall be handed over to the association of the allottees.

Proposed Section

Section 16 of the Act should be deleted.

4.2.9. Common Areas (Section 2 (n))

Under the existing definition of Common Areas in the act, there are some discrepancies which need to be remedied. These discrepancies include:

- Common areas include “the entire land for the real estate project or where the project is developed in phases and registration under this Act is sought for a phase, the entire land for that phase;”. The definition needs to be modified to exclude plots/areas owned by individual allottees.
- Further, common areas also include all community and commercial facilities provided in real estate projects. However, many times some of these facilities need to be handed over to the competent authority as per the prevailing law or are owned by individual owners.

Accordingly, the definition of common areas needs to be amended.

Existing Section

(n) "common areas" mean—

(i) the entire land for the real estate project or where the project is developed in phases and registration under this Act is sought for a phase, the entire land for that phase;

.....

(vii) all community and commercial facilities as provided in the real estate project;

Proposed Section

(n) “common areas” mean-

(i) the entire land for the real estate project or where the project is developed in phases and registration under this Act is sought for a phase, the entire land for that phase excluding areas allocated for individual ownership or use as per plans sanctioned by the competent authority.

.....

(vii) all community and commercial facilities provided in the real estate project as per applicable local law, excluding areas allocated for individual ownership or use as per plans sanctioned by the competent authority.

4.2.10. Exclusion from Registration (Section 3(2))

In different states, RERA authorities have come out with different orders regarding the need for registration of the project if the area of land proposed to be developed does not exceed 500 square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases.

There is a need to clarify this issue and ensure uniform interpretation of the same across the country.

Existing Section

3(2) Notwithstanding anything contained in sub-section (1), no registration of the real estate project shall be required—

(a) where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases:

Provided that, if the appropriate Government considers it necessary, it may, reduce the threshold below five hundred square meters or eight apartments, as the case may be, inclusive of all phases, for exemption from registration under this Act;

(b) where the promoter has received a completion certificate for a real estate project prior to the commencement of this Act;

(c) for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project.

Explanation.—For the purpose of this section, where the real estate project is to be developed in phases, every such phase shall be considered a stand-alone real estate project, and the promoter shall obtain registration under this Act for each phase separately.

Proposed Section

3(2) Notwithstanding anything contained in sub-section (1), no registration of the real estate project shall be required—

(a) where the area of land proposed to be developed does not exceed five hundred square meters or

(b) where the number of apartments proposed to be developed does not exceed eight inclusive of all phases or

Provided that, if the appropriate Government considers it necessary, it may, reduce the threshold below five hundred square meters or eight apartments, as the case may be, inclusive of all phases, for exemption from registration under this Act;

(c) where the promoter has received a completion certificate for a real estate project prior to commencement of this Act; or

(d) for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project.

Explanation. —For the purpose of this section, where the real estate project is to be developed in phases, every such phase shall be considered a stand-alone real estate project, and the promoter shall obtain registration under this Act for each phase separately.

4.2.11. Formation of Association of Allottees (Section 11(4)(e))

Real Estate (Regulation and Development) Act 2016 prescribes that an association of allottees should be formed when the majority of the allottees have booked their plot or apartment or building, as the case maybe, in the project.

However, many local laws allow for the formation of association of allottees only after the occupation certificate/completion certificate is received.

Moreover, as can happen at any time prior to execution of deed of sale/conveyance, the allottees may terminate their booking or agreement for sale ie they may elect to not proceed with the purchase/allotment at all.

Therefore, it is necessary to amend this clause to allow for the formation of association of allottees on receiving of Occupation / Completion Certificate.

Existing Section

11 (4) (e) enable the formation of an association or society or co-operative society, as the case may be, of the allottees, or a federation of the same, under the laws applicable:

Provided that in the absence of local laws, the association of allottees, by whatever name called, shall be formed within a period of three months of the majority of allottees having booked their plot or apartment or building, as the case may be, in the project;

Proposed Section

11 (4) (e) enable the formation of an association or society or co-operative society, as the case may be, of the allottees, or a federation of the same, under the laws applicable:

Provided that in the absence of local laws, the association of allottees, by whatever name called, shall be formed within a period of three months from the date of issue of occupancy certificate/completion certificate, as the case maybe;

4.2.12. Rights & Duties of Association of Allottees

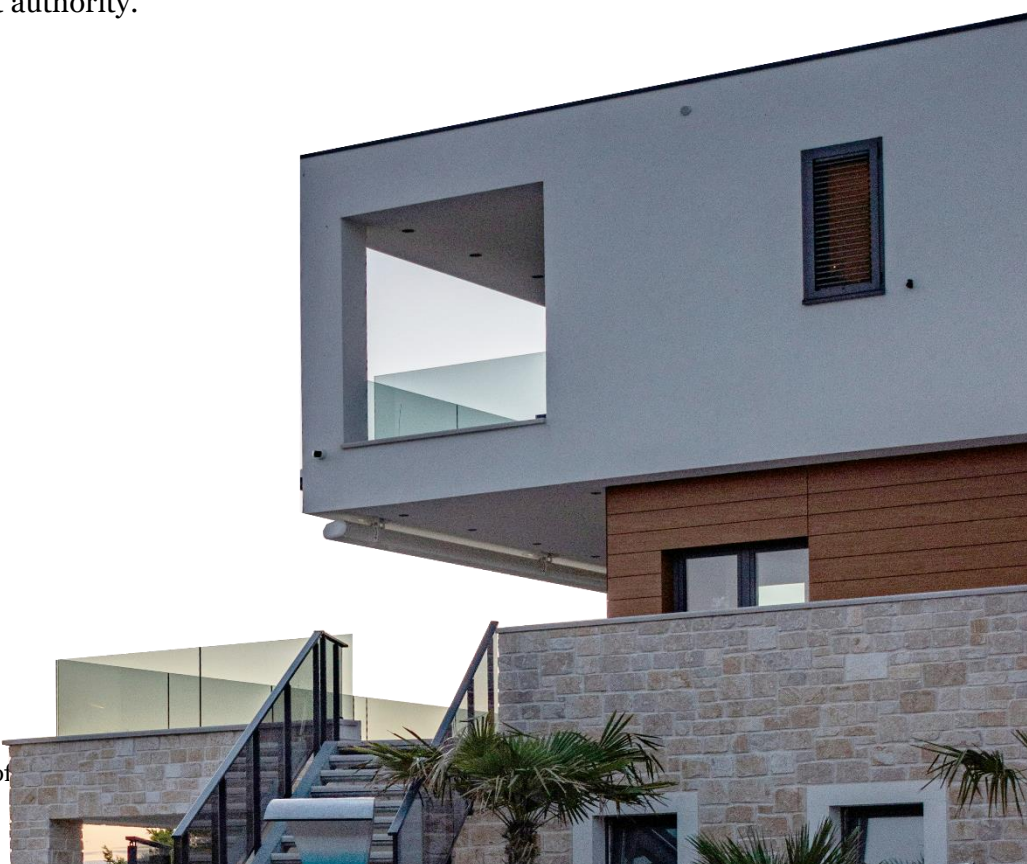
The Real Estate (Regulation and Development) Act, 2016 (RERA) provides for the formation of an Association of Allottees (AoA) to safeguard the interests of homebuyers and ensure proper management of real estate projects. The Association of Allottees plays a crucial role in the maintenance and administration of the common areas and facilities of a real estate project. Therefore, it is necessary to provide for rights and duties of association of allottees.

Proposed Section

Addition of new section

Section 19A: Rights and duties of Association of Allottees

- (1) Association of Allottees shall participate towards the registration of conveyance deed of the common areas of real estate project, as the case maybe and shall take over the physical possession of the common areas from the promoter.
- (2) Association of allottees shall be entitled to receive Original Title Deeds, Sanction Layout plans and plan of the building, details of apartments sold along with their respective Agreement for Sale, list of members, list of amenities
- (3) Association of Allottee shall be also entitled to claim the details of tax receipts paid till date of handover
- (4) Association of Allottee shall be liable to pay all the outgoings and taxes in respect of the building from the date of possession given.
- (5) Association of allottees will be entitled to claim accounts of the amounts collected towards maintenance and other charges from the Promoter at the time of handing over of the building /project to the Association of allottees.
- (6) Association of Allottees association shall be responsible for maintenance of the building/s and its structure and shall not cause alterations or changes against the plan sanctioned by the competent authority.



4.2.13. Post Handover responsibility of Allottees

The Real Estate (Regulation and Development) Act includes a defect liability period of 5 years. However, it does not specifically address the prevention of structural changes by allottees after transfer. There is a need to prevent allottees from making modifications that affect the structural integrity of the buildings.

Proposed Section

Addition of new section

Section 19 (10a):

Every allottee shall be responsible for:

- (1) Not to do or suffer to be done anything in or to the Real Estate Project, said Premises, staircase, common areas or any passages which may be against the rules, regulations or bye-laws of the concerned authorities or change/alter or make addition in or to the Real Estate Project or to the said Premises itself or any part thereof and to maintain the said Premises (including sewers, drains, pipes) and appurtenances thereto at the Allottees' own cost in good repair and condition from the expiration of the Possession Period and not to demolish or cause to be demolished the said Premises or any part thereof and/or make/cause to make any addition or alteration of whatsoever nature in the said Premises and in particular so as to support, shelter and protect other parts of the Real Estate Project.
- (2) Not to change the user of the said Premises and to comply with stipulations and conditions laid down by the Promoter/its designated Project Manager or the said New Society with respect to the use and occupation of the said Premises.
- (3) Not to make any structural alteration and/or construct any additional structures, mezzanine floors, whether temporary or permanent.
- (4) Not to cover or construct anything on the open spaces and/or parking spaces.
- (5) Not to make any alteration in the elevation and outside colour scheme of paint and glass of the Real Estate Project and not cover/enclose the planters and service slabs or any of the projections from the said Premises, within the said Premises, nor chisel or in any other manner cause damage to the columns, beams, walls, slabs or RCC partition or walls, partitions or other structural members in the said Premises, nor do/cause to be done any hammering for whatsoever use on the external/dead walls of the Real Estate Project or do any act to affect the FSI/development potential of the said Land.
- (6) To maintain the said Premises at the Allottee's own cost in good and tenantable repair and condition from the expiration of the Possession Period (irrespective whether the Allottee takes possession or not) and shall not do or suffer to be done anything in or to the Real Estate Project which may be against the rules, regulations or bye-laws or change/alter or make addition in or to the Real Estate Project and the said Premises itself or any part thereof without the consent of the local authorities and Promoter.

(7) Not to store anything on the refuge floor nor store any goods in the said Premises any goods which are of hazardous, combustible or dangerous nature or are so heavy as to damage the construction or structure of the Real Estate Project in which the said Premises is situated or storing of which goods is objected to by the concerned local or other authority and shall take care while carrying heavy packages which may damage or likely to damage the staircase, common passages or any other structure of the building in which the said Premises is situated, including entrances of the Real Estate Project in which the said Premises is situated and in case any damage is caused to the Real Estate Project in which the said Premises is situated or the said Premises on account of negligence or default of the Allottee in this behalf, the Allottee shall be liable for the consequences of the breach.

(8) To carry out at his own cost all internal repairs to the said Premises and maintain the said Premises in the same condition, state and order in which it was offered by the Promoter to the Allottee and shall not do or suffer to be done anything in or to the Real Estate Project in which the said Premises is situated or the said Premises which may be contrary to the rules and regulations and bye-laws of the concerned local authority or other public authority. In the event of the Allottee committing any act in contravention of the above provision, the Allottee shall be responsible and liable for the consequences thereof to the concerned local authority and/or other public authority.

(9) Not to shift or alter the position of either the kitchen or the toilets which would affect the drainage system of the Real Estate Project / or any part thereof in any manner whatsoever.

(10) Not to throw dirt, rubbish, rags, garbage or other refuse or permit the same to be thrown from the said Premises in the compound or any portion of the said Land and/or the Real Estate Project.

(11) Not to display at any place in the said Premises or the Real Estate Project or any part thereof any bills, posters, advertisement, name boards, neon signboards or illuminated signboards. The Allottee shall not stick or affix pamphlets, posters or any paper on the walls of the Real Estate Project or any part thereof or common areas therein or in any other place or on the window, doors and corridors of the Real Estate Project or any part thereof or anywhere else whatsoever on the said Land or any structures thereon.

(12) Not to do or permit to be done any renovation/repair within the said Premises due to which any damage are caused within or outside the said premises.

(13) To maintain the aesthetics of the Real Estate Project and to ensure the quiet and peaceful enjoyment by all the Allottees and occupants therein and for the common benefit of all, and to preserve and maintain the safety, security and value of the said Premises, the Real Estate Project and the said Land.

(14) To use the said Premises or any part thereof or permit the same to be used only for personal residential purpose and the Parking Space only for the purpose of parking vehicle/s.

(15) To take over maintenance of the premises including common areas through the association of allottees within three months of the Occupation Certificate unless otherwise agreed with the promoter.

(16) To pay their maintenance dues to the association of allottees and in the event this payment is not done then the association of allottees is empowered to defer select services to the allottee and recover pending dues with interest and penalty by pursuing with appropriate authority.

(17) to take the conveyance from the promoter as per the prescribed understanding

4.2.14. Withdrawal of Money after Project Completion (Section 4(2)(I)(d))

There is a need to amend the Real Estate (Regulation and Development) Act (RERA) to allow promoters to withdraw the entire amount from the designated Project account after receiving the occupancy certificate or completion certificate for the project. Currently, RERA mandates that 70% of the funds collected from allottees be deposited in a separate account to cover the cost of construction and land. This provision, while aimed at ensuring the financial discipline of promoters and protecting the interests of homebuyers, can create significant financial constraints for developers even after the successful completion of a project. Allowing the withdrawal of the entire amount post-completion would enable promoters to have better cash flow management, ensuring they can efficiently allocate resources to new projects or settle any remaining liabilities, ultimately fostering a healthier real estate market.

It would also incentivize promoters to adhere strictly to timelines and quality standards to obtain the occupancy certificate / completion certificate promptly. Amending RERA to permit full withdrawal post-completion would balance the need for financial prudence with the practical financial needs of developers, promoting a more robust and dynamic real estate sector.

Existing Section:

4(2) (I) (D) that seventy percent. of the amounts realised for the real estate project from the allottees, from time to time, shall be deposited in a separate account to be maintained in a scheduled bank to cover the cost of construction and the land cost and shall be used only for that purpose:

Provided that the promoter shall withdraw the amounts from the separate account, to cover the cost of the project, in proportion to the percentage of completion of the project:

Provided further that the amounts from the separate account shall be withdrawn by the promoter after it is certified by an engineer, an architect and a chartered accountant in practice that the withdrawal is in proportion to the percentage of completion of the project:

Proposed Section

4(2) (I) (D) that seventy per cent. of the amounts realised for the real estate project from the allottees, from time to time, shall be deposited in a separate account to be maintained in a scheduled bank to cover the cost of construction and the land cost and shall be used only for that purpose:

Provided that the promoter shall withdraw the amounts from the separate account, to cover the cost of the project, in proportion to the percentage of completion of the project:

Provided further that the amounts from the separate account shall be withdrawn by the promoter after it is certified by an engineer, an architect and a chartered accountant in practice that the withdrawal is in proportion to the percentage of completion of the project:

Provided also that on receipt of Occupancy / Completion Certificate in respect of the project the entire balance amount lying in the separate account can be withdrawn by the promoter.

4.2.15. Resolution of Lapsed Projects (Section 8)

Real estate Sector in India is suffering from a large overhang of stressed or stuck inventory, which has accumulated over the years. JLL Research estimates that around 4.54 lakhs residential units are classified as delayed / stalled across top seven cities in the country. There is an urgent need to resolve these stressed assets thereby freeing up capital for economic growth along with ensuring homes for homebuyers.

Upon Lapse or Revocation of Project, Authorities should be empowered to undertake such decisions that shall lead to completion of projects. There is a need to empower authorities to revive and complete real estate projects.

Existing Section:

(8) Upon lapse of the registration or on revocation of the registration under this Act, the Authority, may consult the appropriate Government to take such action as it may deem fit including the carrying out of the remaining development works by competent authority or by the association of allottees or in any other manner, as may be determined by the Authority:

Provided that no direction, decision or order of the Authority under this section shall take effect until the expiry of the period of appeal provided under the provisions of this Act:

Provided further that in case of revocation of registration of a project under this Act, the association of allottees shall have the first right of refusal for carrying out of the remaining development works

Proposed Section:

(8) Upon lapse of the registration or on revocation of the registration under this Act, the Authority, may suo-moto or on an application by stakeholders pass such orders / directions as it may deem fit and necessary in the interest of completion of the project and to take such action as it may deem fit including the carrying out of the remaining development works or by the stakeholders which shall include the association of allottees or in any other manner, as may be determined by the Authority:

Provided that no direction, decision or order of the Authority under this section shall take effect until the expiry of the period of appeal provided under the provisions of this Act:

Provided further that in case of revocation of registration of a project under this Act, the stakeholders which shall include the association of allottees shall have the first right of refusal for carrying out of the remaining development works

Additional Recommendation

There is also a need for RERAs to issue detailed SoPs / Guiding principles to achieve the objective of carrying out the remaining development works or taking any other action as needed deemed fit.

4.2.16. Conciliation Mechanism

Conciliation mechanisms have been leveraged by several RERAs in the country to facilitate the resolution of disputes amicably, thereby saving cost and time of litigation to parties and state. This mechanism aims to facilitate quick and mutually acceptable solutions.

While Section 32(g) of the Act, mentions conciliation, there is a need to institutionalise and strengthen the mechanism.

Proposed Section

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Addition of new section

2(q1) “Conciliation” shall mean mediation conducted as per the procedure for conciliation followed as provided under Arbitration and Conciliation Act, 1996.

56A (1) The Authority shall maintain a panel of experts to be called as Conciliation Panel consisting of such number of experts having such qualifications as may be prescribed for conciliation between the parties during the pendency of any proceedings before the Authority or the Appellate Tribunal under this Act.

(2) Any of the parties to the proceedings may, at any time during the proceedings before the Authority, Adjudicating Officer or Appellate Tribunal may apply to the Authority or the Adjudicating Officer or the Appellate Tribunal, as the case may be, for referring the matter to Conciliation Panel and the Authority or the Adjudicating Officer or the Appellate Tribunal, as the case may be, shall appoint one or more experts from the panel referred to in subsection (1).

(3) The Authority or the Adjudicating Officer or the Appellate Tribunal before which any proceeding is pending may, suo motu, refer any matter pertaining to such proceeding to such number of experts from the Conciliation Panel as the Authority or the Adjudicating Officer or the Appellate Tribunal, as the case may be, deems fit.

(4) The Conciliation Panel shall follow such procedure as may be prescribed and dispose of the matter referred to it within a period of three months from the date of such reference and forward its recommendations to the Authority or Adjudicating Officer or the Appellate Tribunal, as the case may be.

4.2.17. Bar of Jurisdiction of Consumer Courts (Section 79)

Several matters pertaining to the Real Estate (Regulation and Development) Act, 2016 (RERA) continue to be filed under various Consumer Disputes Redressal Commissions. The intent of RERA, as specified in its preamble, is "to protect the interests of consumers in the real estate

sector," and the Act includes several provisions aimed at ensuring greater protection for consumers compared to the Consumer Protection Act, 2019.

Despite this, many individuals still approach Consumer Disputes Redressal Commissions for grievance redressal, leading to duplicity of cases, additional costs, and delayed justice. Therefore, it is necessary to establish a clear bar on the jurisdiction of Consumer Disputes Redressal Commissions in matters that fall under the purview of RERA, to streamline the process and ensure timely and efficient resolution of disputes.

Existing Section:

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(79) No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Proposed Section:

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(79) No civil court or Consumer Dispute Redressal Commission established under Consumer Protection Act 2019, shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

4.2.18. Repeal of MOFA (Maharashtra Ownership Flats Act, 1963) (Section 92)

While RERA Act is transforming real estate sector across India, Real Estate Developers in Maharashtra are facing issues due to non-clarity of applicability of Maharashtra Ownership Flats Act, 1963. Real Estate Developers have to deal with police complaints and litigations, on regular basis from mischievous elements of society who are exploiting the loophole in regulatory framework and harassing developers for personal gains.

Maharashtra Ownership Flats Act was enacted in 1963, before RERA, for regulating the promotion of the construction of, the sale and management, and the transfer of flats on ownership basis.

With advent of RERA, Maharashtra Ownership Flats Act, 1963 should have been repealed so as to avoid having two Acts on same subject matter. Furthermore, Section 89 of Real Estate (Regulation and Development) Act (RERA), 2016 clearly states that "Act to have overriding effect: The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.". However, despite enactment of RERA, MOFA continues to be in force, causing issues to Real Estate Projects in Maharashtra.

Many provisions in both the laws are very contradictory in nature and hence the applicability and interpretation of these acts is very challenging for all the stakeholders. Few of the

contradictory clauses are, as per RERA, a promoter cannot accept more than 10% of the cost of the property, as an advance payment / Booking Fee, without first entering into a registered agreement for sale. Whereas according to MOFA, promoter can accept upto 20% as advance payment. Such clauses are not RERA compliant and hence it gives rise to many issues and litigations. Therefore, it is proposed to repeal MOFA Act.

Existing Section:

(92) The Maharashtra Housing (Regulation and Development) Act, 2012 is hereby repealed.

Proposed Section:

(92) The Maharashtra Housing (Regulation and Development) Act, 2012 and Maharashtra Ownership Flats Act, 1963 is hereby repealed.

4.2.19. Promotion of New Technologies and Skill Development in Real Estate Sector (Section 32)

Under Section 32 of the Act, the Authority shall, in order to facilitate the growth and promotion of a healthy, transparent, efficient and competitive real estate sector make recommendations to the Government on various areas including single window system, grading, encouraging investment in real estate sector, sustainability, digitisation of land records and so on.

It is also necessary to add provisions to encourage adoption and integration of new and emerging technologies in the real estate sector as well as skill development of workforce involved in the sector.

Addition of New Section:

32 (k) measures to promote the adoption and integration of new and emerging technologies in the real estate sector.

(l) creation of a regime for the continuous training and skill development of workforce involved in the real estate sector

4.2.20. Limitation of Liability towards defective title to 5 years from Occupation / Completion Certificate (Section 18 (2))

Under Section 18(2) of the Real Estate (Regulation and Development) Act, the Promoter is held liable for unlimited period towards defective title of the land. Even after decades of completion and conveyance of project, the promoter can be held accountable if anyone claims any right on the land.

This needs to be amended to limit the liability to up to 5 years from conveyance of Land to association of allottees.

Existing Section:

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18 (2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.

Proposed Section:

18 (2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, with five years of conveyance of such land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.

4.2.21. Resolution of issues around Commencement Certificate (Section 4)

For several projects across India, example plotted development in Maharashtra, the concerned Competent Authority does not issue a Commencement Certificate or an Occupation Certificate / Completion Certificate. Where there is no provision for Commencement Certificate, the promoter should be allowed to issue a Notice of Commencement to the local/ competent Authority. (Since, the provision of commencement certificate is not there across all Municipal Byelaws)

Existing Section:

4 (1) Every promoter shall make an application to the Authority for registration of the real estate project in such form, manner within such time and accompanied by such fee as may be specified by the regulations made by the Authority. The promoter shall enclose the following documents along with the application referred to in sub-section (1) namely: -

(c) an authenticated copy of the approvals and commencement certificate from the competent authority obtained in accordance with the laws as may be applicable for the real estate project mentioned in the application, and where the project is proposed to be developed in phases, an authenticated copy of the approvals and commencement certificate from the competent authority for each of such phases. .

Proposed Section:

(1) Every promoter shall make an application to the Authority for registration of the real estate project in such form, manner within such time and accompanied by such fee as may be specified by the regulations made by the Authority. The promoter shall enclose the following documents along with the application referred to in sub-section (1) namely: -

(c) an authenticated copy of the approvals and commencement certificate or approved sanctioned building plan (in case there is no provision of issuance of a commencement certificate) or such other certificate by whatever name called from the competent authority obtained in accordance with the laws as may be applicable for the real estate project mentioned in the application, and where the project is proposed to be developed in phases, an

authenticated copy of the approvals and commencement certificate from the competent authority for each of such phases.

In case there is no provision for Commencement Certificate, the promoter shall issue a Notice of Commencement to the local/ competent Authority before commencement of construction.

Additional Recommendation:

Where the local Acts provide for issue of Commencement Certificate in addition to sanction of building plan, a promoter should be allowed to apply for registration with the evidence of having applied for Commencement Certificate. (As issue of commencement certificate may take time, a developer may be allowed to register with RERA on the basis of his applying for commencement certificate, to save on time and also enable him to stick to the project completion deadline.)

The layout plan for the phase for which registration is considered should be furnished and the requirement of asking for the master layout plan for all phases taken together should be omitted. (Based on actual experience of first phase layout there may be necessity of modifying the subsequent phases of layout forming or constituting the total master plan).

4.2.22. Limited Common Areas

Many State Acts have the concept of Limited Common Areas wherein it allows designation of select common areas and facilities as reserved for the use of certain apartment or apartments to the exclusion of the other apartments.

The same concept needs to be introduced in RERA to avoid confusion.

Addition of New Section:

2(zb1) “limited common area and facilities” means those common areas and facilities reserved for use of certain apartment or apartments to the exclusion of the other apartments which includes reserved car park spaces, exclusive balcony, verandah area, exclusive open terrace area appertaining to the aptment;

4.2.23. Conveyance of Common Areas in Condominium (Section 17(1))

In some states, Conveyance of the common areas in favour of the association of allottees is not possible in the case of condominium ownership wherein the buildings, land and common areas have been conveyed to all the allottees by means of separate sale deeds of the apartment and proportionate undivided share in the land and common areas of the project. Hence, in such mode of ownership, it is not possible to convey the common areas to the Association because these have already been conveyed to and are in the collective, joint ownership of all the allottees.

Addition of New Provision in Section 17 (1):

Provided that, in projects wherein undivided proportionate right and title in the common areas has been conveyed by the Promoter to each of the allottees along with the conveyance of

their respective apartment such that all the allottees collectively own and possess all the common areas without the Promoter owning and possessing any part of the same, the requirements of this sub-section shall be deemed to have been fulfilled.

4.2.24. Amendment of Force Majeure Definition (Section 6)

The definition of Force Majeure needs to be expanded to include standard conditions including pandemic/epidemic, lockdowns, acts of terrorism, invasions, nuclear disasters, civil unrest etc.

Existing Provision:

Explanation. — For the purpose of this section, the expression "force majeure" shall mean a case of war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project.

Proposed Provision:

Explanation. — For the purpose of this section, the expression "force majeure" shall mean a case of war, flood, drought, fire, cyclone, earthquake, pandemic / epidemic, lockdowns, acts of terrorism, invasions, nuclear disasters or any other calamity affecting the regular development of the real estate project.

